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United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	2:05-CV-0149 DFL/KJM
)	
Plaintiff,)	STIPULATION TO DISMISS AS TO TWO
)	DEFENDANTS AND ORDER THEREON
v.)	
)	
)	
APPROXIMATELY \$1,200,000 IN)	
U.S. CURRENCY SEIZED FROM)	Date: N/A
FIRST CALIFORNIA BANK ACCT.)	Time: N/A
NO. 2005638, ETC.)	Courtroom: N/A
)	
)	
Defendants.)	
)	

Plaintiff United States of America and claimants Universal Insurance Exchange ("Universal"), and Bennett Truck Transport, LLC ("Bennett"), stipulate as follows:

1. Universal is a general unsecured creditor of Tri-Continental Exchange Ltd. ("TCE"), Combined Services, Ltd. ("CSL") and/or Alternative Market Exchange Ltd. ("AME), collectively referred to herein as the "Debtors." Bennett asserts constructive trust and unsecured claims against the debtors and the forfeiture funds. Bennett also asserts a lien on

1 the funds pursuant to California Code of Civil Procedure §
2 708.410.

3 2. The plaintiff has filed a civil forfeiture action
4 against the defendant currency, alleging that the funds were
5 involved in, or are traceable to, money laundering violations
6 committed by Robert L. Brown a.k.a. Matthew Schachter ("Brown")
7 through TCE and CSL, and/or constitute or are derived from the
8 proceeds of mail fraud, or a conspiracy to commit such offense,
9 committed by Brown through TCE and CSL.

10 3. Universal filed a Claim to the defendant currency on
11 March 24, 2006, and filed an Answer to the Verified Complaint for
12 Forfeiture In Rem (the "Complaint") on April 11, 2006.

13 4. Bennett filed a Claim to the defendant currency on
14 November 23, 2005, filed a Lien on Pending Action on January 10,
15 2006, and filed an Answer to the Complaint on January 9, 2006.

16 5. John Hollis filed a Claim to the defendant currency on
17 or about December 19, 2005.

18 6. In a Memorandum of Opinion and Order dated July 19,
19 2005, (hereafter "District Court Order") this Court granted, in
20 part, the plaintiff's motion to dismiss Hollis's claim. This
21 Court ruled that Hollis does not have standing to assert an
22 interest in the \$1.2 million seized from his trust account at
23 First California Bank Account No. 2005638 (Order, at 16), nor
24 does he have standing to assert an interest in the \$177,695.11
25 connected to a transfer to the United States from Bullivant
26 Houser Bailey.

27 7. This Court ruled that Hollis does have standing to
28 assert a claim to the \$225,958.84 seized from Hollis' personal

1 bank account at Bank of America.

2 8. Thereafter, Hollis filed an Answer to the Complaint
3 (under seal) on September 19, 2006, and filed an Amended Answer
4 (under seal) on September 26, 2006.

5 9. The government and the Liquidators for the debtors (see
6 ¶ 12(a) infra) entered into a stipulation to transfer the
7 defendant funds, other than the \$225,958.84 described in ¶ 7, to
8 the bankruptcy court for distribution to the debtors' creditors
9 in accordance with all applicable laws.

10 10. The government and claimants Bennett and Universal now
11 seek to dismiss this forfeiture action without prejudice,
12 pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure
13 against the approximately \$1.2 million seized from First
14 California Bank Account No. 2005638, and the approximately
15 \$177,695.11 connected to a transfer to the United States from
16 Bullivant Houser Bailey. This stipulation is based upon the
17 determination that the defendant funds belong to Brown traceable
18 to fraudulent activities conducted through TCE and CSL, and that
19 the funds should be administered in connection with the
20 insolvency proceedings for TCE and CSL.

21 11. The rights of Bennett and Universal, if any, to the
22 sums described in the preceding paragraph will be determined in
23 accordance with applicable bankruptcy law, forfeiture law, and/or
24 state law. Nothing in this stipulation is intended to
25 adjudicate, hinder, or impair the rights of claimants to the
26 funds, and such rights, if any, are preserved and will be
27 addressed in the insolvency proceedings discussed below.

28 12. The facts in support of this stipulation and request

for an Order are as follows:

- a. Foreign insolvency proceedings have been commenced against the Debtors in St. Vincent and the Grenadines before the Eastern Caribbean Supreme Court (the "SVG Proceedings"). A three-person Foreign Representative was duly appointed in the SVG Proceedings to serve as the Joint Liquidators (hereafter "the Liquidators") of the Debtors.
- b. The U.S. Bankruptcy Court in the Eastern District of California has granted the Liquidator's Petition seeking recognition as the Foreign Representative of the Debtors in a procedure authorized pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. § 1501 et seq. Attached to this stipulation as Ex. 1 is a copy of Judge Klein's Memorandum Decision Regarding Recognition of Foreign Main Proceeding filed September 11, 2006.
- c. In addition, the government and the Liquidators entered into a stipulation in which the government agreed that it would seek dismissal of this forfeiture action so that the funds could be transferred to the Bankruptcy Court for administration. A copy of that stipulation is attached as Ex. A to Judge Klein's Order Approving Modified

1 Stipulation Between the United States of
2 America, the Debtors, and John W. Hollis,
3 [hereafter "Order"] attached hereto as Ex.

4 2.

5 13. In addition, the government, claimant John Hollis, and
6 the Liquidators entered into a separate stipulation in which the
7 parties agreed that the defendant currency identified as the
8 approximately \$225,958.84 seized from Bank of America account No.
9 004653665607 would remain under the jurisdiction of the district
10 court pending completion of the resolution of the competing
11 claims to the \$225,958.84. A copy of that stipulation is
12 attached as Ex. B to Judge Klein's Order (Ex. 2).

13 14. As noted above, the Order (Ex. 2) incorporates the
14 stipulation between the United States and the Liquidators on
15 behalf of the debtor, and the stipulation between claimant
16 Hollis, the United States, and the Liquidators.

17 15. In light of this Court's determination that Hollis has
18 no standing to challenge the forfeiture of the \$1.2 million
19 seized from an attorney trust account and the \$177,695.11 seized
20 from Bullivant because they belong to Brown, (District Court
21 Order, at 13-16; 17-19), the parties to this stipulation agree
22 that these funds should be administered in the Chapter 15 cases
23 of TCE and CSL under the supervision of the Bankruptcy Court.

24 16. Plaintiff also contends that the funds that were
25 seized from claimant Hollis' personal account at Bank of America
26 (approximately \$225,958.84) also belong to TCE and CSL and should
27 be administered in the Chapter 15 case under the supervision of
28 the Bankruptcy Court. However, claimant Hollis has advised the

1 plaintiff that he objects to the transfer of these funds to the
2 Bankruptcy Court, and will oppose any effort to do so.
3 Accordingly, at this time the plaintiff, Universal, and Bennett
4 only seek the dismissal of the forfeiture action as to the
5 defendants identified as the \$1.2 million seized from the
6 attorney trust account, and the \$177,695.11 Bullivant funds to
7 the Bankruptcy Court.

8 17. Upon dismissal of this action as to the \$1.2 million
9 and the \$177,695.11, the plaintiff will take all steps necessary
10 to transfer these funds from the U.S. Treasury-Customs Suspense
11 Account to the Liquidators identified in the September 11, 2006,
12 Memorandum Decision Regarding Recognition of Foreign Main
13 Proceedings (Ex. 1).

14 18. The parties to this stipulation agree that there was
15 reasonable cause for the seizure and arrest of the defendant
16 currency and that the Court may enter a Certificate of Reasonable
17 Cause pursuant to 28 U.S.C. § 2465.

18 19. The parties further stipulate that even if they receive
19 any distribution of funds in the bankruptcy proceedings, that
20 distribution is not to be considered as a "judgment for the
21 claimant" within the meaning of 28 U.S.C. § 2465(a), nor will
22 that claimant be considered a "prevailing party" within the
23 meaning of 28 U.S.C. § 2465(b).

24 20. Any claimant's entitlement to costs or attorney fees
25 will be determined solely in accordance with applicable law.
26 Under no circumstances will the United States be liable for costs

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or attorney fees incurred by claimants in this forfeiture action
or in the bankruptcy proceedings.

DATED: November 30, 2006

McGREGOR W. SCOTT
United States Attorney

By: /s/ Kristin S. Door
KRISTIN S. DOOR
Assistant U.S. Attorney

DATED: December 7, 2006

PARKINSON PHINNEY

By: /s/ Thomas R. Phinney
THOMAS R. PHINNEY
Attorneys for Claimant Bennett
Truck Transport, LLC

DATED: November 30, 2006

HUGHES & PRITCHARD

By: /s/ Gregory J. Hughes
GREGORY J. HUGHES
Attorneys for Universal
Insurance Exchange

(Original signatures retained by attorney)

IT IS SO ORDERED.

Dated: December 12, 2006

/s/ David F. Levi
DAVID F. LEVI
United States District Judge

CERTIFICATE OF REASONABLE CAUSE

Pursuant to the Stipulation for Dismissal and the
allegations set forth in the Complaint for Forfeiture In Rem
filed January 24, 2005, the Court enters this Certificate of
Reasonable Cause pursuant to 28 U.S.C. § 2465, that there was
reasonable cause for the seizure of the currency identified as

1 the \$1.2 million seized from the First California Bank Account
2 No. 2005638 and the \$177,695.11 connected to a transfer to the
3 United State from Bullivant House Bailey.

4
5 Dated: December 12, 2006

6 /s/ David F. Levi
7 DAVID F. LEVI
8 United States District Judge
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